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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 48th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 March 1994, at 7 p.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

later: Mr. URRUTIA (Peru)

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The meeting was called to order at 7.15 p.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

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(agenda item 11) (continued) (E/CN.4/1994/34-38, 39 and Corr.1, 40-42, 43 and Add.1, 44 and Add.1, 45 and 74; E/CN.4/1994/NGO/2-4 and 38; A/48/579)

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 19) (continued) (E/CN.4/1994/73/Add.1, 75, 76 and Add.1, 77 and Add.1, 78 and Add.1, and 109; A/CONF.157/23)

1. Mr. AREVALO DE LEON (Observer for Guatemala), speaking on agenda item 19, said that Guatemala asked the Commission to support its efforts to continue the process of political, social and economic transformation needed to replace the structures bequeathed by authoritarian regimes. An optimistic review of the direction that process was taking was justified by the facts: when, less than a year previously, the then President, Jorge Serrano Elías, had tried to dissolve the National Congress and the Supreme Court of Justice and to rule by decree, Guatemalan society as a whole had come to the aid of the democratic institutions. Without recourse to violence and in strict compliance with constitutional provisions, political parties, trade unions, the public and entrepreneurs had joined the international community in rejecting the coup, sparking off a process that had ended in the election of a new constitutional President, Ramiro de León Carpio, who, by virtue of his former office of Human Rights Procurator, embodied the political aspirations of Guatemalan society. In so doing, they had revealed, not only their determination to avoid a reversal of the changes, but also their ability to use the key resource for the country's democratic future: the rule of law.

2. As former Human Rights Procurator, the new President was aware that promotion of full enjoyment of all human rights was the concrete expression of Guatemala's institutional transformation. He had embarked on implementation of a programme of measures that incorporated the recommendations made by the previous Independent Expert, Mr. Tomuschat. Those measures included: (a) the drafting of a national human rights plan to provide the Executive with guidelines, coordination of which was the responsibility of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH); (b) a relaxation of the procedures for approval and recognition

of the artificial personality of non-profit-making organizations; (c) the restructuring of the Presidential Generals Staff and the abolition of the security department known as the Archivo; (d) the creation of a commission to study proposals to set up a State intelligence service, attached to the Office of the President of the Republic and independent of the military intelligence services - a measure to be implemented during 1994; (e) a commitment not to set up new civilian self-defence patrols (PACs) in areas where their existence was not justified, and to entrust the Office of the Human Rights Procurator with verification of the voluntary nature of membership; (f) the appointment of civilians with expertise in human rights matters to senior posts in the National Police, the creation of special sections to investigate reports of violations, submission to the Congress of the Republic of a bill organizing the National Police, together with the drafting of plans to increase its professionalism and technical capacities; (g) submission to Congress of a bill on military and social service; and (h) establishment of an Indigenous Fund to meet the needs of the indigenous communities, as defined by themselves.

3. In addition to those specific measures, others were being taken in the context of the Government's general efforts to promote a substantial improvement in living standards. Unfortunately, thanks to the inadequacy of the policies applied during most of the nation's history, Guatemalan society faced enormous socio-economic problems. The efforts made by the Government were reflected in the results of the 180-day plan applied in the latter half of 1993, and in the five areas it had singled out for attention in 1994 and 1995: consolidation of democracy and the rule of law; the fight against poverty; transformation of the production system; conservation of the environment; and modernization of institutions. Specific programmes existed in each of those areas, intended not merely to alleviate existing shortcomings, but to lay the foundations for an irreversible long-term process in which the interaction between the Government and the various sectors of the country would be redefined.

4. The task of building a political, economic and social democracy on the ruins of an authoritarian system that had perverted each and every institution was not an easy one for a nation with limited resources. However, all Guatemalans possessed the determination to address the task of overcoming the obstacles to their development, and the Government had harnessed that determination, through efforts to renew dialogue with the Unión Revolucionaria Nacional Guatemalteca (URNG), with a view to putting an end to the 30-year-long conflict. The new framework for negotiations agreed upon in Mexico City in January 1994 contained mechanisms which should avoid a recurrence of the deadlock in which the previous round of negotiations had ended. In that regard, it was to be noted that a representative of the Secretary-General of the United Nations would attend the talks as a mediator; and that representatives of Colombia, Mexico, Norway, Spain, the United States of America and Venezuela would attend the negotiations as observers. The presence of the international community in the negotiations would enable the parties to demonstrate their willingness to negotiate a non-violent solution to the conflict. In the first instance, the Government had agreed to take up the issues of the human rights agreement and the international verification of compliance therewith. In addition to those negotiations, the Government would continue to apply a number of measures to promote and protect human rights,

and in particular, would seek to put an end to impunity. It was to be hoped that, in its turn, URNG would demonstrate its constructive attitude by abandoning terrorism and violence as a means of achieving its political objectives.

5. The Government of Guatemala had not come before the Commission on Human Rights with the intention of concealing or denying its shortcomings in the area of human rights. Guatemalans acknowledged that recognition of those failures was a necessary part of the process of achieving a solution. It was no coincidence that, in a moment of crisis, they had elected the Human Rights Procurator to the presidency. However, it was to be hoped that their successes, as well as their failures, would be recognized. Those successes included the continuation of the return of Guatemalan refugees from Mexico, more than a thousand of whom had returned to their communities of origin in January 1994 alone; the fact that since August 1993 there had not been a single report of violations of the rights of street children by the security forces; the decision by Communities in Resistance (CPRs) to resume participation in public life; and the registration of new trade unions in recent months as a result of the relaxation of procedures for their legalization. Those were just a few examples of the transformation that Guatemalan society was undergoing and that the Government, with a mandate from its people, was encouraging. The Commission and the Independent Expert could rest assured that the Government would study their recommendations and would spare no efforts to further their implementation. It was, first and foremost, in the Government's own interest to transform the adverse circumstances still affecting millions of its citizens. However, provision of advisory services to the Government should not be limited to the functions of the Independent Expert, but should extend to provision of technical and financial assistance in all areas in which shortcomings persisted. He called upon the international community to give tangible form to its concern regarding the situation in Guatemala by providing real assistance to support the efforts made by the people of Guatemala in that regard.

6. Mr. HAGROO (International Islamic Federation of Student Organizations), speaking on agenda item 11 (d), said that there were many situations around the globe in which conflicts or disputes were used as a pretext for the suspension of fundamental rights. There were also situations in which the denial of human rights and freedoms created or aggravated conflicts and disputes. In the latter case as well as the former, conflict merely heightened the suppression of freedoms. Yet increased repression only increased human resistance to force, as the quest for survival gathered pace. The situation of Muslims in Bosnia and Herzegovina provided the most glaring example of a people battling to ensure their most fundamental freedom - their very survival.

7. Elsewhere, in Kashmir, populations were undergoing mass exoduses and displacement as the result of their fundamental struggle to achieve self-determination. In 1947, on the eve of the partition of India, the predominantly Muslim Kashmir valley had been unaffected by the rioting sweeping the sub-continent, while the Muslim minority in the neighbouring region of Jammu had, with assistance from the State forces, been butchered or driven to seek refuge in Pakistan.

8. Mr. CHAKRAVARTI (India), speaking on a point of order, said that the speaker was departing from the agenda item under discussion.

9. The CHAIRMAN requested the speaker to confine his remarks to the agenda item.

10. Mr. HAGROO (International Islamic Federation of Student Organizations) said that in 1965, half a million people had been driven across the cease-fire line for daring to differ with the views of the ruling Indian coterie. Fifty thousand people had been arrested and detained in inhuman conditions. The process of deportation had been repeated in 1971, and also in 1989-1990, on which occasion Muslims had attempted to halt the exodus of Kashmiri Hindus.

11. Basic human rights could not be re-established in Kashmir without the attention of the international community. Intolerance and the denial of values sparked off conflicts that quickly escalated.

12. The CHAIRMAN ruled the speaker out of order.

13. Ms. ESCORCIA (Commission for the Defence of Human Rights in Central America - CODEHUCA) said that in order to carry out his mandate, of reporting on human rights developments in El Salvador, the Independent Expert needed to count on the cooperation of the Government of El Salvador, as provided for in Articles 55 and 56 of the Charter of the United Nations. That obligation of cooperation had been breached by the Government of El Salvador when it had prevented the Independent Expert from entering its territory, as described in the introductory paragraphs of his report (E/CN.4/1994/11). The Commission must roundly condemn that action on the part of the Salvadorian Government. The refusal to allow the Independent Expert entry was not an isolated incident, but formed part of a consistent pattern, the Government having also denied entry to the Inter-American Commission on Human Rights. It was clear that, aware of the implications of paragraph 10 of Commission resolution 1993/93, the Government was deliberately attempting to prevent the Independent Expert from preparing his report.

14. The "substantial improvement" referred to in that paragraph had not been forthcoming. On the contrary, according to paragraph 102 of the most recent report by the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), the situation had actually deteriorated by October 1993. That deterioration was associated with the renewed activity of the death squads, and with the Government's failure to implement the recommendation of the Commission on the Truth that the death squads should be investigated and disbanded forthwith.

15. It was thus absurd to seek to recall the Independent Expert from El Salvador, at a time when it had been necessary for the Secretary-General to promote the creation of additional mechanisms for investigation, such as the Joint Group for the Investigation of Illegal Armed Groups. Implementation of the Peace Agreements, the indispensable prerequisite for the enjoyment of human rights, remained fragile and incomplete. The presidential candidates had undertaken to comply with the Peace Agreements and it was thus necessary for the Commission to maintain its vigilance through the independent expert,

and to monitor compliance with the recommendations to be made by the Joint Group in June 1994. The least the Commission could do was to support the work of its experts, thereby strengthening its own methods of work.

16. Mr. Urrutia (Peru) took the Chair.

17. Ms. SPALDING (Commission for the Defence of Human Rights in Central America - CODEHUCA) said that one of the main conclusions of the report of the new Independent Expert on Guatemala (E/CN.4/1994/10, para. 173) was that phenomena internationally considered to be grave violations of human rights continued to occur in Guatemala, and that adequate legal and political measures had not yet been taken in that regard. That conclusion was consistent with observations contained in other recent reports by United Nations officials, on the basis of which the Commission should have decided, during its discussion of agenda item 3, to treat the case of Guatemala under agenda item 12 at its current session. Yet, notwithstanding the conclusions reached by the Independent Expert and the careful wording of resolution 1993/88, the Commission again found itself in the unfortunate position of having to discuss Guatemala under agenda item 19.

18. Notwithstanding that caveat, the Copenhagen Initiative for Central America, an association of European non-governmental organizations present at the invitation of CODEHUCA, welcomed the report of the Independent Expert, which clearly identified the institutions which should be eliminated or reformed, rather than merely renamed, if human rights were to enjoy de facto as well as de jure protection. Her organization recognized that important changes had taken place in Guatemala in recent years, and that the new President had committed his Government to improving the human rights situation. Yet it was struck by the Independent Expert's observation that the Office of the Human Rights Ombudsman had received 1,552 claims of serious human rights violations in 1992, while by the end of November 1993 it had already received 1,488 such claims. Numbers alone could not do justice to the horrors entailed in gross human rights violations. The grim reality behind those figures was that there had been an increase in death threats, kidnappings, criminal acts attributed to the civilian self-defence patrols (PACs) and violations of the right to private property. Claims of violations of economic, social and cultural rights had also increased. Similar observations had also been made by the Working Group on Enforced or Involuntary Disappearances, by the Special Rapporteur on the question of torture, and by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

19. Her organization did not deny that positive steps had been taken by both the current and previous Guatemalan Governments. Yet the institutional roots of grave human rights violations, and of impunity, stubbornly endured. The Independent Expert had singled out the pervasive militarization of the country and the ineffectiveness of the judicial system as major obstacles to respect for human rights and the clarification of the truth. The question now facing the Commission was not whether human rights were violated in Guatemala, but rather, how it could best help the Government and people of Guatemala to put an end to their tragic history of abuse, exile, loss and suffering. The Commission should not diminish its support for genuine changes in the human rights situation in Guatemala. If it chose not to respect fully either the

letter or the spirit of its resolution 1993/88, she hoped that it would at least renew the mandate of the Independent Expert, express its grave concern at the persistent human rights violations highlighted in the Expert's report, and lament the failure to comply with recommendations made by the previous Independent Expert. Finally, by including a clause akin to that contained in resolution 1993/88 and keeping Guatemala under item 3, the Commission could help stop the erosion of the advisory services mechanism, while building in incentives for compliance with its new resolution.

20. Ms. MEDRANO (International Indian Treaty Council) said that many non-governmental organizations, members of the Commission and observers shared the view that agenda item 19 was not an appropriate context for the discussion of situations of countries in which there were persistent violations of human rights and fundamental freedoms, situations which should properly be discussed under agenda item 12. Guatemala had been receiving advisory services since 1987, despite which, violations of human rights and fundamental freedoms persisted. The Maya majority were those most affected by that situation. Not only were they the victims of military repression by the State, but they had also been denied their right to economic, political, social and cultural development as a result of the de facto racial discrimination that prevailed in Guatemala.

21. Her organization saluted the achievement of the Independent Expert in producing a report on the human rights situation in Guatemala in such a short time. It had also read the various reports referring to Guatemala submitted to the Commission, from which it was clear that at no point had there been an improvement in the human rights situation. On the contrary, there had been a very significant deterioration during 1993, as was confirmed by the report of the Department of State of the United States of America, as well as by domestic reports.

22. While it was true that Guatemala had had three civilian Governments since 1986, it was also true that the army had never relinquished real power. In her organization's view, it was the ubiquitous presence of the army, to which the Independent Expert several times drew attention in her report, which had vitiated the advisory services. The recommendations made by the various experts and special rapporteurs over the seven years of provision of advisory services had gone unheeded by the Government, a reflection of its lack of will to change the repressive policies of the State. The persistence of impunity further suggested that the perpetrators of violations enjoyed the protection of the authorities. For that reason, it had been inappropriate to consider the case of Guatemala under agenda item 19. The only way of ensuring that 9 million Guatemalans would be able to enjoy their human rights and fundamental freedoms was to consider the case of Guatemala under agenda item 12.

23. Mr. LAMEMAN (Survival International), speaking on behalf of the Confederacy of Treaty Six First Nations in Western Canada, said that while 1993, designated by the United Nations as the International Year of the World's Indigenous Peoples, had fallen far short of expectations in terms of the support received from countries and non-governmental organizations, it had served as a valuable lesson and gave hope for the international decade of the world's indigenous peoples due to start on 10 December 1994.

24. He recommended that adequate funds should be allocated to support programmes and initiatives to promote the international decade. Given the lack of commitment to the International Year, the funds for the international decade should at least equal, if not exceed, funds allocated to other international decades. Governments should also be encouraged to commit and allocate a meaningful proportion of funds from their national budgets. Those funds should be made available to indigenous peoples so that projects could be initiated at the community level to promote the decade. A unit should also be established and funded for the purpose of planning programmes and initiatives, half of whose members should be indigenous persons, the rest being recruited from the United Nations and its specialized agencies, non-governmental organizations and observer Governments. Similar units could be established at national level.

25. In the context of alternative approaches, he recommended that a permanent forum for indigenous peoples should be set up within the United Nations system (a United Nations council of indigenous peoples) as one of the programmes of the international decade and in conjunction with the ongoing work of the Working Group on Indigenous Peoples, which could discuss the composition, organization and activities of such a council.

26. Another worthwhile project was the study of treaties, agreements and other constructive arrangements between States and indigenous peoples being carried out by the Special Rapporteur, Mr. Miguel Alfonso Martínez. It was, however, very inadequately funded and he urged the United Nations to increase its resources. The Confederacy also favoured the creation of a central registry of indigenous treaties and recommended the holding of a United Nations Conference on Indigenous Treaties, which would greatly assist the work of the Special Rapporteur.

27. He reiterated the Confederacy's concern with regard to the draft United Nations declaration on the rights of indigenous peoples in its present form. Indigenous peoples' organizations would apparently be able only to comment on that draft but not propose any changes at the twelfth session of the Working Group on Indigenous Peoples in July 1994. It would be difficult for such organizations after 12 years of hard work to endorse a watered-down declaration that in the long run would be detrimental to indigenous peoples and beneficial to nation States, the very problem the whole process was intended to address. He appealed to the United Nations to allow indigenous peoples full and meaningful participation at every level at which the draft declaration would be discussed.

28. Mr. WEERAKOON (Sri Lanka) said that the reports by the Special Representative of the Secretary-General, Mr. Francis Deng, on internally displaced persons and on the situation in Sri Lanka (E/CN.4/1994/44 and Add.1), were generally appreciative of the efforts Sri Lanka was making to assist its displaced and returnee population and to provide relief aid to persons under the virtual control of a militant group.

29. The ongoing conflict in the north and east of Sri Lanka had created a large internally displaced population numbering around 600 thousand persons. Close coordination and cooperation between government ministries, local government authorities, international agencies and non-governmental

organizations ensured the massive humanitarian effort involved including the supply of food and medical supplies and the provision of medical care, housing and education facilities. The financial burden of US$ 5 million per month was borne by the Government. Sri Lanka agreed with the specific recommendations made by the Special Representative and with the need to improve and build on the existing relief and rehabilitation programme. The quality of relief at present provided could be enhanced with greater international donor assistance.

30. With regard to resettlement programmes, the guidelines issued by the Sri Lankan Ministry of Reconstruction, Rehabilitation and Social Welfare made clear that the Government was committed to the principle that resettlement should be on a voluntary basis only as far as both internally displaced persons and returning refugees from Europe were concerned.

31. While the Sri Lankan Government was in overall agreement with several of the recommendations relating to protection and assistance to the internally displaced, it felt that certain parts of the report appeared to have extended beyond the scope of the Special Representative's mandate. While a detailed response to the report would be forwarded to the Special Pepresentative in due course, he would point out that there were some inaccuracies in the sections of the report dealing with a historical survey of the events leading to the present situation, the root causes of the conflict and the continuing search for a durable political solution. Although it was true that only the elimination of the root causes could lead to a just and durable solution of a conflict, specific recommendations regarding conflict resolution were clearly beyond the mandate of the Special Representative. Furthermore, in the section relating to the role of the donor community, the conditionality of donor assistance was touched on - a controversial issue far removed from the subject of the care of the internally displaced.

32. With regard to the ongoing debate on internally displaced persons in general, one problem was the lack of a functional definition of internal displacement, since in conflicts both displaced and non-displaced groups might be affected in similar ways and require the same sort of special assistance. In addition, there was a need for appropriate mechanisms to assist coordination and cooperation between governments, United Nations agencies and non-governmental organizations. Lastly, it should be borne in mind that displacement was frequently caused by the violent acts of terrorist groups; States could therefore not be held solely accountable for such acts and their consequences.

33. The Government of Sri Lanka, welcoming a most constructive report, said it would continue to cooperate with the Special Representative in the future in its continuing efforts to protect and assist the internally displaced.

34. Mr. PORTALES (Chile) welcomed the establishment of the post of High Commissioner for Human Rights and in particular appreciated the appointment of a distinguished Latin American diplomat, Mr. José Ayala Lasso of Ecuador, to the post in view of the interest the Latin American and Caribbean region had long shown in the creation of such a post and its signal role in its adoption.

35. It was unfortunate that the media and hence world public opinion had not given due attention to what was perhaps the most significant development within the United Nations system for the protection of human rights since the proclamation of the Universal Declaration of Human Rights. Communications and information were crucial elements in the protection of human rights and should not be neglected. He therefore urged the Centre for Human Rights to prepare a campaign to ensure the world was properly informed of the importance of the new post that had been created.

36. The tasks which the High Commissioner for Human Rights would be called on to perform were set out in General Assembly resolution 48/141. In addition to his general executive duties within the framework of the general standards of the United Nations, the High Commissioner had specific tasks relating to preventive measures and for rapid response by the system, covered in operative paragraph 4 (a), (f) and (g) of that resolution. Those provisions gave the High Commissioner considerable scope for action in dealing with threats to human rights in the context of impending crises both in proposing solutions to prevent situations from worsening and in seeking timely and appropriate action from the various political and executive bodies within the United Nations system.

37. Another aspect of the High Commissioner's mandate was the technical advisory and training services provided to Member States. Those tasks were set out in operative paragraph 4, sub-paragraphs (c), (d), (e), (h) and (i) of the above resolution and would enable the High Commissioner, through the Centre for Human Rights, to coordinate all activities relating to information training and technical assistance in the field of human rights. The prompt and effective provision of such services was crucial for countries in process of strengthening their legal systems. The establishment by the United Nations at the request of States of local offices to provide technical assistance and training tailored to the needs of the country concerned was a further possibility.

38. The support the High Commissioner would receive from non-governmental organizations would be crucial to his work and it was to be hoped that they would contribute fruitfully to it, especially in the case of the organizations whose efforts in their particular areas of competence had complemented those of the United Nations and helped to provide worldwide monitoring of human rights.

39. Mr. BURDEKIN (Australia), speaking on agenda item 11 (b), said that one of the most encouraging developments in the protection and promotion of human rights had been the recent rapid evolution of national institutions to provide accessible remedies to individuals whose rights had been violated. The 1993 World Conference on Human Rights had recognized that by adopting the Vienna Declaration and Plan of Action, which acknowledged the importance of independent national institutions and also emphasized that States had an obligation to establish and maintain effective human rights machinery, that increased efforts should be made to assist countries which wished to establish or strengthen national institutions and that while it was the right of every State to choose the framework best suited to its national needs, particular regard should be paid to the "Principles relating to the status of national

institutions" which had been endorsed by the Commission at its forty-eighth session in resolution 1992/54 and welcomed by the United Nations General Assembly in 1993.

40. The Australian Government and the Australian Human Rights Commission had for the past three years committed increasing resources to promoting the establishment and strengthening of independent national institutions. As Federal Human Rights Commissioner in Australia, he had been particularly encouraged by the growing awareness internationally, and in the Asia and Pacific region in particular, of the necessity for effective national human rights machinery. However, while the international machinery that had been evolved to monitor the most important human rights treaties was important, it was largely inaccessible to many of the most vulnerable and powerless individuals, since in many countries the courts, traditionally regarded as the guarantors of individual rights and liberties, were out of their reach. For example, 99 per cent of those who came to the Australian Commission for Human Rights for assistance could not afford to employ lawyers or to endure the long delays associated with juridical determinations. Court systems were frequently irrelevant when abuses of economic, social and cultural rights were in question.

41. For those and other reasons the Second International Workshop on National Institutions held in Tunis in December 1993 had unanimously decided to request the United Nations to give appropriate recognition to the role such institutions played in implementing United Nations human rights standards by according them appropriate status to enable them to participate in meetings of United Nations human rights bodies in the same way as Governments, intergovernmental organizations and accredited non-governmental organizations. That would also be in line with the procedures whereby national human rights institutions were enabled to participate in the 1993 World Conference on Human Rights.

42. Regional arrangements, where they existed, complemented United Nations machinery and national institutions and offered valuable opportunities for sharing national experience. The Asia-Pacific region was the only region lacking such a body. However, the increase in national human rights institutions in the region and the growing cooperation among them were perhaps a precursor to the establishment of regional or subregional organizations. In working towards that goal, Australia had consistently been a sponsor of General Assembly and Commission resolutions promoting such regional arrangements in the Asian and Pacific region and looked forward to further cooperation to that end. Australia had, at the World Conference on Human Rights contributed A$300 thousand to the Voluntary Fund for Technical Assistance, to assist in the creation and strengthening of national institutions.

43. Turning to agenda item 11 (a), with respect to women's rights, he fully endorsed the proposal that the Commission should establish a special rapporteur on violence against women as a follow-up to the adoption by the General Assembly of the Declaration on the Elimination of Violence against Women. That would not only give tangible expression to the Commission's commitment to implement effective measures but would also recognise that violence against women was both a violation of human rights and a matter for

international action. Furthermore, it would assist in realizing the objective of having women's rights receive due attention from human rights bodies. The Australian Government had made a major commitment to the elimination of violence against women at national level, including consideration by Federal, State and Territory governments of a national strategy on violence against women.

44. Australia believed it essential for the rights of all vulnerable groups in society to be recognized and protected. One area of discrimination yet to be accorded effective attention with the United Nations system was sexual orientation. Discussion of such issues was bound to be difficult given the diversity of political, cultural and religious traditions represented in the international community; nevertheless action from a human rights perspective to proscribe discrimination on the grounds of sexual orientation was long overdue. Australia had enacted legislation that recognized sexual preference as a ground of discrimination in employment, for the purpose of inquiry and conciliation by the national Human Rights and Equal Opportunity Commission.

45. Australia was also concerned about the plight of those discriminated against because of their HIV status, not only because of the need to protect the human rights of individuals with HIV/AIDS but also because discrimination against those affected was counterproductive in preventing the spread of the pandemic. Australia had released the second stage of the national HIV/AIDS strategy, which sought both to ensure that such discrimination was eliminated and to continue the "partnership" approach to HIV/AIDS which had helped Australia to provide effective prevention and education as well as high quality health care.

46. In conclusion, with reference to agenda item 11 (c), he said that he shared the views of previous speakers on the importance of the work of the Centre for Human Rights. He looked forward in particular to the publication of the manual on national institutions which would be extremely useful to countries endeavouring to create effective and independent national institutions or to strengthen those already in existence.

47. Ms. MALUWA (Malawi), speaking on agenda item 19, said that as the report of the Secretary-General on advisory services in the field of human rights (E/CN.4/1994/78) indicated, Malawi had been one of the beneficiaries of the expertise and technical assistance provided by that programme, in particular with relation to the referendum held in June 1993. The Centre for Human Rights had contributed in no small measure to the reforms that had taken place in Malawi and most of the proposals made in the Needs Assessment Report had been or were being implemented. Malawi looked forward to cooperation with other Governments, the Centre for Human Rights, other international organizations and non-governmental organizations in the implementation of other programmes, in particular those that would be needed after the general elections scheduled for May 1994.

48. Malawi envisaged the establishment in the very near future of a national human rights commission and/or the office of an ombudsman. It also hoped to provide technical assistance to local human rights bodies and training for personnel in the civil service and the administration of justice and to engage in law reform. If those programmes were to be achieved, technical and

financial assistance would be required from the Centre for Human Rights and the international community at large. Pursuant to the recommendations in the Needs Assessment Report, other specific areas for reform had been earmarked and a more comprehensive programme of activities would be submitted in due course.

49. Since training and education were important means of promoting respect for human rights, Malawi greatly appreciated the fellowships and internships offered by the Centre for Human Rights and hoped that the lack of funds for such purposes would soon be remedied. It was also important that training should be directed to vulnerable groups such as women and children. Malawi therefore welcomed the targeting of women in training programmes offered by the Centre for Human Rights. It was hoped, however, that other training programmes in addition to development of curricula for primary and secondary schools could be provided, such as mini-summits at the regional level where children, the leaders of the future, would be afforded an opportunity of exchanging ideas on human rights and fundamental freedoms.

50. Malawi welcomed the new orientation in the working methods of the programme of advisory service, which would strengthen development, democracy and human rights, and urged the Centre for Human Rights to strengthen its involvement in full partnership with all States and international organizations as well as non-governmental organizations. The full range of activities outlined in the report could, however, only be meaningfully implemented by increasing the human and other resources available to the Centre for Human Rights; she called on the international community to address that issue as soon as possible.

51. Mr. HEBIBAS (Albania), speaking on agenda item 19, recalled that the Commission had at its previous two sessions welcomed and encouraged the positive steps being taken by Albania towards democracy and respect for human rights. Albania had continued to make progress and had created conditions conducive to a further improvement in the situation of human rights.

52. In the field of legislation, the aim of the Albanian Government had been to enact provisions that were in line with international human rights standards. The most important realization had been the adoption by the Albanian Parliament of the Albanian Charter of Human Rights, which had been prepared with the assistance of international experts and organizations. The Bill together with the Law on Principal Constitutional Provisions had laid the necessary legal foundation for safeguarding human rights and fundamental freedoms in Albania.

53. Considerable efforts had also been made to improve the provisions of the Penal Code, with a view to making it more democratic and humane and provide sound safeguards for a person's rights in legal proceedings - in particular, by means of the provisions concerning legal aid and release on remand.

54. Fuller details of the legislative measures adopted during 1993 relating to civil, political, economic, social and cultural rights appeared in the Secretary-General's report presented pursuant to Commission resolution 1993/65 (E/CN.4/1994/75). Those measures had helped to improve a number of human rights in Albania; in particular, they had helped to promote socio-political

pluralism through freedom of activity for a number of political parties and non-governmental organizations. The further democratization of social and political life had also promoted the traditional tolerance and understanding among various social groups, minorities and religious communities, thus enhancing respect for human rights.

55. At a practical level, efforts had been made in areas such as education and information about human rights. The organizing of seminars and training courses, and more radio and television programmes about human rights, had helped to spread awareness of them. Albania had benefited, in that regard, from the advisory services and technical assistance provided in close cooperation with the Centre for Human Rights, the Council of Europe, and other international non-governmental organizations.

56. In conclusion, he stressed the importance of advisory services in the field of human rights. Albania's experience of fruitful cooperation with the bodies which provided such services clearly illustrated their usefulness and pointed to the need to provide adequate resources for those bodies, particularly the Centre for Human Rights, and thus improve their capacity to go on providing cooperation programmes in that sphere.

57. Mr. GUPTA (India) said that terrorism had become a pervasive and organized threat to human rights in their widest form, and must be seriously addressed under two broad aspects: the danger it posed to the State, society and human rights; and its use as a means to strike at the sovereignty and territorial integrity of other nations for political objectives. There was also terrorism's links with narcotics and religious extremism. The climate of violence and fear it engendered posed a threat to the psyche of all societies and to the structures and response mechanisms of States themselves.

58. India had, particularly during the past decade, faced the onslaught of terrorism on a massive scale and in all forms. It had first appeared in the wake of left-wing extremism in some parts of the country, in the name of deprivation and neglect by society and the State, and had more recently taken the form of violent ethnic and sub-ethnic conflicts. Unfortunately, the international community had contributed, wittingly or unwittingly, to the process by silence, and terrorism had apparently gained some acceptance, and even respectability, by being described as "insurgency", "freedom struggles", and so on. From that stage it was but a step to making available the means to wage violence - the development of arms smuggling and the link with narcotics traffic, as well as the large-scale use of weaponry and tactics prohibited in national and international law and practice. With regard to the phenomenon of so-called narco-terrorism, there were examples in India and elsewhere in the world of an exponential growth in heroin addiction which, if not checked, would increasingly threaten many societies.

59. Terrorism as seen in India was also a direct attempt, through large-scale attacks on politicians, the judiciary, the press and government officials, to destroy the democratic institutions which alone protected civil society and human rights. Should those institutions be destroyed, the law of the jungle would replace the rule of law, propaganda and disinformation would replace legitimate expression through representative institutions and the media, and grievance redress would depend on the whims of a dictatorship. Attacks had

been made not only on members of the police and security forces, and on their families in many cases, but also indiscriminately on innocent civilians; thousands of men, women and children had been killed and maimed. Bomb blasts in trains and elsewhere in recent years exemplified the indiscriminate use of explosives obtainable through sponsorship of terrorism.

60. Terrorism was also being used to foster social and religious conflicts. Recent events in Jammu and Kashmir reflected efforts to change the very demographic profile of one part of the State, resulting in brutal attacks on the minority community and incitement on religious grounds which was threatening the provision of modern, secular education to hundreds of thousands of children.

61. Unfortunately, current law, as understood and applied, left much to be desired and could even be perceived as providing legitimacy to the perpetrators of terrorism around the world. In that connection, his delegation appreciated the statement made by the representative of Turkey, earlier in the current session, on certain fundamental issues requiring urgent consideration by the Commission and the world community as a whole.

62. To mention but one aspect, in India over 100 groups were currently engaged in spreading violence and terrorism; but in any discussion they were described in terms such as "armed opposition groups" or "the political opposition", and situations were described as "internal armed conflict", as if such groups were legitimate combatants authorized to use force, whereas in fact they were bound by no rules, generally adopted outlawed methods, and chose targets which should be immune under national and international law. When such "armed opposition groups" were virtually equated with the State, the latter's difficulty in meeting its responsibilities was aggravated because, while it could be held accountable and questioned, the opposing forces could not. And a new dimension had been added on account of the support for terrorism from beyond international borders. As noted in comments quoted by the representative of Turkey in the statement referred to earlier, civil wars were no longer mere conflicts between domestic forces within a State but had become limited wars between outside Powers; and, since the underlying practice and political policy were endemic, it was futile for the law to insist on branding it as illegal.

63. The question was whether the international community would remain a mute spectator, while human rights slogans and forums were being used to cover terrorism and its sponsorship. The Vienna Declaration, it should be recalled, condemned all acts, methods and practices of terrorism as activities aimed at the destruction of human rights, fundamental freedoms and democracy; it urged the international community to take necessary steps to enhance cooperation to prevent and combat terrorism. Prompt action must be taken before it was too late.

64. Mr. NASSERI (Islamic Republic of Iran) said that Ministers representing Asian States, meeting at Bangkok in March 1993 in the context of preparations for the World Conference on Human Rights, had decided inter alia that, while human rights were universal in nature, they must be considered in the context of a dynamic, evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various

historical, cultural and religious backgrounds. And in November 1992, Ministers representing African States, meeting at Tunis, had stressed the existence of difficulties, endogenous and exogenous, which impeded satisfactory implementation of human rights at the universal level. A number of Western countries had viewed the Asian and African positions as a formidable challenge, and the question had arisen whether the concept of universality of human rights instruments, as understood by the West, would survive the World Conference. At the latter, however, a compromise formula had been arrived at, reflected in paragraph 5 of the Vienna Declaration and Programme of Action. Asia and Africa thereby understood, from that important agreed text, that historical cultural and religious backgrounds could no longer be disregarded in interpreting existing human rights instruments and setting new ones, while general commitments to respect human rights and fundamental freedoms remained unaffected. Such a significant development, if applied properly, could lead to true universality.

65. It would be unfair to conclude that the 63 countries which had not signed and ratified either or both of the International Covenants wished to violate human rights; their decision stemmed, in most cases, from reasons based on their historical, cultural and, for the most part, religious backgrounds; in fact, 17 Islamic countries had refrained from signing and ratifying the major international human rights instruments. In many prominent Islamic countries, any substantial departure from Islamic law was tantamount to a betrayal of their religion, the most sacred part of their identity. It was simply not enough to tell them that, in the field of human rights, international instruments stood above domestic law and that the latter should be aligned with the former. It was noticeable that a number of those Islamic countries, whose political stability was vital to the West, were not even persuaded to accede to the instruments, since to do so might adversely affect their social fabric.

66. The Islamic world claimed to have pioneered the promotion of human rights, in an age when such rights did not exist elsewhere. In the tenth century, for example, Cordoba, in Islamic Spain, had been by far the most civilized city in Europe; and Islam had preserved and evolved Roman and Greek civilizations. At the same time, the Islamic world questioned the origin and essence of international human rights instruments - in particular, why they made no mention of God. Even on a democratic basis, at least 80 per cent of the world's peoples believed in God in some form; nearly all of them shared the view that absolute justice came only from God, from responsibility to whom men's rights and responsibilities towards each other derived. In practical terms, they pointed to the decadence, shallowness and the sacrifice of morality to secularism in the West; disenchantment with surface values was a particularly powerful reason for Islamic revivalism in modern times.

67. The opposing arguments, in support of international instruments, were sufficiently well known. It was held that, in order to make them internationally accepted, they represented only a compromise reflecting common denominators. It was clear, nevertheless, that their texts had been influenced by the ideas reflected in Rousseau's Social Contract, based on humanism.

68. The only realistic way forward, therefore, was through genuine dialogue and flexibility of approach, enabling the two sides to feel that dialogue no longer constituted a threat to their respective positions but a means to new and higher understandings, and eschewing the paranoia, voiced prior to the Vienna Conference, about threats to universality. In that regard, Europe was in no position to reject Asia's regard for historical, cultural and religious backgrounds, since the latter certainly superseded the "local requirements" which, according to the European Convention on Human Rights, should be taken into account, for territories under European control, in the implementation of human rights. While the dialogue continued, existing international human rights instruments, more flexibly interpreted, could serve as a modus operandi.

69. With reference to Commission resolution 1993/94, on documentation and appointments, he pointed out that the guidelines on the volume of reports had not been complied with in 11 reports hitherto, and that the timing for distribution of reports had been neglected in 14 cases. As for appointments, the distribution in the previous year had been one for Africa, two for Asia, two for eastern Europe, five for western Europe and others and seven for Latin America. The current distribution included three from Africa, three from Asia, two from eastern Europe, six from Latin America and six from western Europe and others - a slight improvement but a far from desirable situation. The Commission, therefore, must remain seized of the matter.

70. Mr. GODOY (Cuba) said that the Commission's current session - the first since the World Conference on Human Rights - showed no sign of a change towards cooperation in considering human rights issues or an improved basis for the Organization's future work in that sphere - a disappointing outcome for those who had placed their hopes on the World Conference. That session, like the preceding ones, remained in the hands of a group of countries which disregarded the real needs of the world's deprived peoples and evinced no will to seek a better world at the end of the twentieth century, but rather sought to impose their own standards and interests on the rest of world society. That group had seemingly arrogated to itself the right to judge the countries of the South, ignoring real problems, arbitrarily voicing some rights and ignoring others, and seeking to impose mechanisms which would further erode such fundamental rights as sovereignty and self-determination.

71. It had been hoped that the countries in question might begin to show fairness and responsibility in looking at the alarming violations of human rights, including the resurgence of racist, xenophobic and neo-Fascist tendencies in Europe and the imperial north of the Americas. And it had been hoped that human rights issues would no longer be used for political, individual or ideological motives.

72. Perhaps the most monstrous violation of human rights was their political manipulation. In the name of human rights, attempts were made to distort the mandates of United Nations bodies and establish new procedures and mechanisms to make the Security Council a world policeman on behalf of the aims and interests of a super-Power and its allies. Efforts were being made to replace genuine dialogue and cooperation by the imposition of rules of a supposed new world order, while continuing to deny to the peoples of the South the fundamental human rights, including the right to development, that they had

lacked under the unjust old order. But those countries would not allow the defence of human rights to be distorted into a pretext for having their sovereignty and right to self-determination restricted for the benefit of certain Powers.

73. There should be regard for what mankind could really achieve if the current climate of confrontation and hegemonistic claims by some industrialized countries was replaced by cooperation based on respect for the principles of the Charter of the United Nations and the historical, cultural and religious characteristics of each nation. Human rights issues should be deliberated not in an atmosphere of censure on the part of some countries against others but in a spirit of genuine commitment, by the world community in general and each State in particular, to protecting the human person, not particular economic interests, systems or ideologies.

74. It would be unpardonable to remain idle in the face of all the current human tragedies, typified inter alia by war, xenophobia, neo-fascism and racism, the worsening situation of women and children, growing unemployment, environmental damage and the cultural decline of indigenous populations. His own country was well aware of the universal values which inspired mankind, having suffered for many years from having its post-colonial development, and the full enjoyment of human rights by all its people, hampered as a result of the continued criminal blockade which had been unilaterally and arbitrarily imposed for over 30 years, since the early days of the Cuban revolution, by the United States, a super-Power which sought to govern the destiny of a people while trampling on the human rights of thousands of women, children, the elderly and infirm of its own nation. Surely it was high time, especially since the cold war was over, for the international community to take a firm step in calling on the United States of America to put an end to such unilateral coercive measures, which violated the basic right of any nation to survival.

75. Mr. TORELLA DI ROMAGNANO (Italy) said that his delegation fully endorsed the statement made by the representative of Greece on behalf of the European Union, at the 45th meeting, on agenda item 19. The technical cooperation programme, which Italy supported, had become an essential pillar of United Nations action in the field of human rights, and helped to promote a spirit of cooperation and dialogue with Member States that could not but contribute to the prevention of human rights violations and an ever wider implementation of international human rights standards. At the World Conference on Human Rights, there had been broad consensus on that part of the human rights programme, reflected in the Vienna Declaration and Programme of Action. Italy would do its best to build on that consensus; it believed in the Programme's effectiveness, and attached the greatest importance to action by the Centre to establish national infrastructures for the promotion and protection of human rights. Italy was proud to associate itself with such United Nations efforts and was one of the largest contributors to the Voluntary Fund for Technical Cooperation in the Field of Human Rights, having made available over US$ 1 million over the past two years for the Centre's activities. His delegation encouraged the Centre to continue its efforts to enhance transparency, streamline internal procedures and improve the overall effectiveness of its technical cooperation programmes.

76. His delegation welcomed recent appointments to the Centre, which would put the programme in line with the growing demands of the international community. The appointment of the High Commissioner for Human Rights was also to be welcomed, since that would facilitate effective coordination between the Centre, other United Nations bodies, regional and national institutions and non-governmental organizations in the implementation of technical cooperation projects in the field of human rights.

77. Electronically accessible human rights data played a critical role in both protecting and promoting human rights. He therefore informed the Commission of Italy's initiative and support for a new programme to computerize regional and national human rights institutions in Africa, particularly the Organization of African Unity Commission for Human and Peoples' Rights in Banjul.

78. His Government was positively considering the appeal of the Assistant Secretary-General for Human Rights concerning the recent opening of the United Nations Human Rights Office in Cambodia. The challenge of supporting a newly emerging democracy deserved financial backing. Italy was also finalizing an agreement with the Centre on action to train military government officials - starting with some Latin American and African countries - in the twin questions of humanitarian law and human rights. It was also to take an initiative to finance a series of courses on human rights in peace-keeping and peacemaking at the International Labour Organisation/United Nations Training Centre in Turin for military staff involved in peace-keeping operations. In short, Italy was doing her fair share in supporting the programme of technical cooperation in the field of human rights.

79. Mr. FLORIAN (Peru), expressing his appreciation of the report on internally displaced persons (E/CN.4/1994), which was all the more admirable for having been carried out on a small budget, noted that, as the report stated, what was at issue was not mere statistics, but real human beings who were at that moment suffering as a result of having to leave their homes and ways of life. His own country had experience of the phenomenon: the terror had resulted in three separate waves of internally displaced persons, amounting to over half a million people.

80. The author of the report, Mr. Deng, had also pointed out the complex factors preventing national authorities from dealing with the problem, with the result that protection and humanitarian assistance for displaced persons had to be sought elsewhere. The Peruvian Government had been among the first to stress that the international community should show its solidarity with the most vulnerable groups of society by providing practical help. The experience of the various United Nations bodies should be placed immediately at the service of internally displaced persons, in order to work out projects which could lead to lasting solutions. In that connection his Government urgently appealed to the Secretary-General and the United Nations High Commissioner for Refugees for immediate discussions on the establishment of multi-agency cooperation bases to serve until the United Nations system had decided what permanent legal and political measures it should take concerning internally displaced persons.

81. In view of the urgency of the matter, his Government had set up a technical commission in 1992 to examine the problem. In conjunction with the Government's efforts to achieve peace in the country, the commission would contribute to the country's development. In that connection, he informed the Commission that his Government had issued an invitation to the Representative of the Secretary-General to visit Peru, so that he could see the situation for himself and discuss an urgent plan of action with the Government.

82. Lastly, in relation to agenda item 11 (b), he was glad to announce the re-establishment of the Peruvian National Council for Human Rights.

83. Mr. RUAI (Sudan), speaking in exercise of the right of reply, said that the allegations made earlier by Christian Democrat International repeated the disinformation disseminated by opposition groups residing in some foreign capitals and by some non-governmental organizations and missionary groups which were frustrated because the former "closed regions" in Sudan, especially in the south, had been thrown open to free competition between various missionary groups, including those propagating the Islamic faith. He pointed out that the massive movement of population from the south as a result of the conflict between government forces and the rebel movement had been in the direction of the north and not that of neighbouring countries. If the people of the south had been afraid of persecution and retribution, they would have taken refuge in neighbouring countries, as many had in the 1960s and 1970s; yet they had moved to the north.

84. Sudan was and would continue to be a land populated by a multiplicity of races, cultures and religions. It had a long tradition of tolerance. The visit of Pope John Paul II to the Sudan had identified the conflict in the country as political rather than religious and his call for peace and religious dialogue had been heeded by the Government of Sudan. There had been a recent visit by a delegation from the World Council of Churches; and the recommendations of the Conference on Religions, held in Khartoum in April 1993, were being gradually implemented. Foremost among them was the establishment of the Muslim-Christian Forum, where the two communities could voice their grievances and discuss and resolve issues. Another step forward was the recommendation to abolish the Missionary Act of 1962, in response to a request made by the Pope. The Government was ready to cooperate with any group and in any serious initiative to resume the dialogue in order to resolve the conflict peacefully. His delegation hoped that non-governmental organizations would desist from inflammatory statements or calls for foreign intervention, thus allowing the current initiatives to run their course and bring about the desired peaceful settlement in Sudan.

85. Mrs. MARKUS (Libyan Arab Jamahiriya), speaking in exercise of the right of reply, said that, contrary to what had been asserted, women in her country enjoyed equality with men. Under Shariah Law, God had conferred special blessings on women, giving them the status of mother, sister or wife; materially, there was no difference between the rights of men and women. Islamic law gave women the right to dispose of their own property, the right of custody in cases of divorce and, if a divorced mother died, it was her mother who took over custody of the children. The mother had priority over the father in other ways, too; the fact that the Prophet had said three times

that he loved his mother most showed that in Islam the mother held a privileged position. She could inculcate the ideals of tolerance and love towards all, without distinction, in accordance with the teaching of Islamic law.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (agenda item 12) (E/CN.4/1994/3-6, 7 and Corr.1 and Add.1-2, 8, 46-61, 97, 102-104, 110, 115 and 119; E/CN;4/1994/NGO/7, 9, 12-15, 22-24, 26, 28, 29, 37, 40, 42 and 43; A/48/526 and Add.1, 561, 562, 578, 584, 600 and Add.1 and 601).

86. Mr. FASEHUN (Nigeria) said that since 1964 the political and military situation in the Republic of Cyprus had violated the fundamental human rights of many of its inhabitants. The Secretary-General's most recent report on the situation (S/26777) had revealed that many families were still separated and that cases of missing persons had been submitted by both the Greek and the Turkish Cypriots. The forcible division of the island was the factor that had caused most of the human rights violations that had taken place.

87. Applauding the Secretary-General's efforts to achieve a peaceful and lasting solution to the problem, he said that the set of ideas and the package of confidence-building measures put forward by the Secretary-General contained useful proposals, which his delegation urged both sides to implement. The international community was not happy with the stalemate in Cyprus and its renewed interest in the matter was underlined by the appointment of a European Union observer. The mediation of the international community could, however, meet with success only if the two communities compromised and worked more effectively to promote tolerance and reconciliation.

88. Ms. EL KHAZEN (Lebanon) said that her country still suffered from occupation by Israel, which continued to control a large area of South Lebanon, in defiance of General Assembly and Commission resolutions. Lebanon believed in the sanctity of human rights, yet it saw those rights violated daily by Israel on Lebanese territory. In July 1993, Israel had launched a large military operation on South Lebanon and the West Bekaa, causing hundreds of innocent casualties, displacing thousands of inhabitants and destroying their houses, schools, hospitals, places of worship and public institutions. South Lebanon was still subjected to random shelling by heavy artillery and aircraft almost daily.

89. Israel had for several years held more than 200 Lebanese in the detention centres of Khiam and Marjeyoun, preventing the International Committee of the Red Cross from visiting them. Lebanese and other detainees in Israeli prisons and detention centres should be released immediately, in response to the appeals of the international community and in accordance with international law, resolutions and practices, particularly in view of the fact that peace negotiations were in progress which called for confidence-building measures.

90. Israel could not justify its shocking practices and violations of human rights on the grounds of self-defence, or its retaliation on the operations launched by the resistance, for they were the natural consequence of the occupation and the despair it generated. Moreover, such operations were limited and did not match the ferocity of Israeli attacks.

91. Lebanon's message was one of peace and stability. It therefore called on the international community to live up to its responsibilities and to insist on the unconditional withdrawal of Israel from Lebanon.

92. Lastly, she expressed her country's thanks to the International Committee of the Red Cross for its efforts to alleviate the suffering of the population and to the United Nations High Commissioner for Refugees for her assistance during the massive exodus that had followed the Israeli aggression on South Lebanon in July 1993. She also wished to express Lebanon's appreciation of the UNIFIL forces in South Lebanon and of all the countries who contributed to those forces, whether financially or in human personnel.

The meeting rose at 10 p.m.

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Fiftieth session

SUMMARY RECORD OF THE 49th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 March 1994, at 10 a.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

later: Mr. ENDO (Japan)

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Statement by the President of the Republic of Haiti

Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, including:

(a) Question of human rights in Cyprus (continued)

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GE.94-12005 (E)

The meeting was called to order at 10.20 a.m.

STATEMENT BY THE PRESIDENT OF THE REPUBLIC OF HAITI

1. The CHAIRMAN invited the President of the Republic of Haiti to address the Commission.

2. Mr. ARISTIDE (Haiti) said that, on the eve of the third millennium, weapons had become deadlier than ever and such deadly weapons were being used to impose a fierce, barbaric and bloodthirsty dictatorship on his country. Since the coup d'état of 30 September 1991, 5,000 citizens of Haiti had been murdered and the Charter of the United Nations, the Universal Declaration of Human Rights and the Haitian Constitution were violated daily. That had been confirmed by the reports of the joint United Nations Organization of American States (OAS) International Civilian Mission, the Special Rapporteur on the Situation of Human Rights in Haiti, Amnesty International, Americas Watch, Haiti Résistance et Démocratie and a number of non-governmental human rights organizations working in Haiti.

3. All those sources, reported that violence perpetrated against the civilian population by the military and their civilian allies had increased sharply throughout 1993 and early 1994. Attacks on the right to life and physical integrity were essentially aimed at denying freedom of opinion and expression, freedom of assembly and freedom of peaceful association. After 29 hellish months, cruelty was at its peak. The leaders of the coup d'état were forcing the 67 per cent of the population which had elected him to the nation's highest office to accept neo-colonialism or death.

4. In September 1993, the armed forces and their civilian agents had murdered Edouardo Dil, Martial Aurélus, Inès Dormé and Captain Fritz Pierre-Louis with complete impunity. On 27 December 1993, armed civilians had killed approximately 30 persons living in Cité Soleil and had left thousands more homeless when they had set the complex on fire. Those same armed civilians had been involved in the cowardly murder of Antoine Izméry on 11 September 1993 who, according to the Special Rapporteur, had been dragged from Sacred Heart Church in Port-au-Prince where he had been attending a memorial mass to commemorate the 11 September 1988 massacre at Saint John Bosco Church (para. 57). According to the International Civilian Mission, it had been a carefully planned and orchestrated commando-style operation, involving the Haitian Armed Forces (FADH) and their agents, who had carried out the execution with complete impunity. The Minister of Justice, Guy Malary, had been assassinated on 14 October 1993. On 2 February 1994, at least 12 young people had been killed in Sarthes, a suburb of Port-au-Prince, when the house where they had sought refuge from the attachés was tear-gassed.

5. Those were but a few examples. Anyone suspected of supporting the restoration of constitutional order was subject to arrest, detention, torture or abuse. Arrests were made without warrants, in violation of article 9 of the International Covenant on Civil and Political Rights and of article 17 of the American Convention on Human Rights. Acts of torture and attacks on physical integrity were committed in violation of article 5 of the Universal Declaration of Human Rights and article 25 of the Constitution of Haiti. The security - or rather, the insecurity - forces were a constant threat to

newspaper vendors; radio stations pillaged during the coup d'état were still closed; journalists had been forced underground; and the Parliament was held hostage by the leaders of the coup d'état.

6. In that connection, he recalled the resolution adopted by the OAS Permanent Council on 30 September 1991, demanding the punishment of those responsible for the loss of human life and the fact that the United Nations General Assembly had declared, by its resolution 3074 (XXVIII) of 3 December 1973, that political asylum could not be granted where there were strong grounds to suspect that the person concerned had committed a war crime or a crime against humanity.

7. Under article 147 of the Constitution, political amnesty had been granted to the leaders of the coup d'état in a spirit of reconciliation and justice that was not synonymous with impunity. The Centre for Human Rights and various non-governmental organizations (NGOs) had courageously denounced impunity and were working with the Haitian people to establish the rule of law. As the representative of one NGO had stated to the Commission, impunity was no accident of fate; it was man's doing and it could therefore be remedied by man.

8. In the first century after the arrival of Christopher Columbus, 90 million American Indians had perished. In Haiti, the genocide was still going on. He wondered why 300,000 internally displaced persons had had to go underground and were being persecuted, pursued and deprived of the basic human right to food and the right to earn a living. The right of those people to escape from repression should also be respected and yet political refugees were being turned away, unable to cross a kind of new Berlin wall raised in the ocean. Many boat people had died at sea. That was a violation of article 33 of the Convention relating to the status of refugees, which prohibited refoulement in any manner whatsoever to the frontiers of territories where a refugee might be persecuted. During 30 months, many Haitian refugees had been repatriated only to face persecution, beatings, arrest and torture.

9. The commanders of the army and of the police force must be dismissed immediately. The 7,000-man Haitian army absorbed more than 40 per cent of the national budget; the Haitian Armed Forces were, like the national as a whole, hostages of the coup leaders and their allies. In that regard, the international community could not remain neutral. In failing to assume its full responsibilities under the Governors Island Agreement of 3 July 1993, it was increasingly beginning to look like an accomplice to the crime. Procrastination and deceptive promises could not but undermine the credibility of those involved in the crisis.

10. Referring to the close correlation between democracy and the rule of law, he said that the Haitian judicial system was no longer functioning. In a barbaric corrupt system, the 38 judges and 17 officials of the Court of Cassation, the Court of Appeals and the Prosecutor's Office were under constant pressure from the coup leaders. As part of a reform of the system, a school must be opened as soon as constitutional rule was restored to train many new judges and court officials. A new police force must also be trained, as set forth in the Constitution of 1987 and the Governors Island Agreement.

11. He urged the friends of Haiti to expedite the establishment of a Commission on the Truth and to seek funds for the indemnification of coup d'état victims. It was hard to believe that the United Nations and the Organization of American States could not deliver the people of Haiti from a regime of terror. Aware that, by the year 2000, one half of the world's population would be under 25 years of age and that most of them would be poor, he and his supporters rejected political cynicism in favour of the rule of law. They would never give up their campaign to implement the elections of 16 December 1990.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(agenda item 12) (continued) (E/CN.4/1994/3-6, 7 and Corr.1 and Add.1-2, 8, 46-61, 97, 102-104, 110, 115, 119 and 122; E/CN.4/1994/NGO/7, 9, 12-15, 22-24, 26, 28, 29, 37, 40, 42-44; A/48/526 and Add.1, 561, 562, 578, 584, 600 and Add.1, and 601)

12. Mr. BIRO (Special Rapporteur), introducing his report on the situation of human rights in the Sudan (E/CN.4/1994/48), said that, when taking up his task, he had assured the Government of the Sudan that he intended to carry out his mandate in the most impartial and objective manner. As for the legal framework of his mandate, he wished to emphasize that, in studying and assessing the situation of human rights in the Sudan, he had applied only those standards of international human rights law to which Sudan had voluntarily consented or which applied as a matter of customary law.

13. A considerable amount of information had been collected during his two field missions to the Sudan. Additional information had been received during visits to Kenya and Egypt and through the Centre for Human Rights. An impressive volume of documentation had also been provided by the Government of the Sudan. He expressed his appreciation to that Government for its efforts, in particular those of the Minister of Justice and his staff, in organizing meetings and responding to most of the questions he had asked, though not all the communications were entirely satisfactory and the more recent ones contained nothing that would cause him to modify the conclusions and recommendations of his report.

14. It should be noted, that clearances required for flights to locations in the conflict zones had sometimes been denied by the Government or provided only after a delay. A most serious incident had been the arrest of several persons who had come to meet him during his first visit to the Sudan. They had finally been released but several of them had been threatened, exposed to degrading treatment and verbally abused during their interrogation by security officers.

15. The situation in the Sudan had deteriorated to such an extent that widespread violations of human rights by government forces as well as abuses by members of the factions of the Sudan Peoples' Liberation Army (SPLA) continued to take place. Potentially all categories of the population were

affected by human rights violations, in particular the rights to life and physical integrity. Violations attributed to Government forces included widespread arbitrary arrest, systematic torture and large numbers of extrajudicial killings and executions. For their part, the SPLA factions had killed numerous citizens.

16. In the northern part of the country, many suspected opponents of the Government were victims of violations at the hands of the armed forces. In the conflict zones, thousands of civilians, including women and children, had been killed and hundreds of thousands had been displaced. He stressed that women and children were the main victims of the conflict and were particularly affected by contemporary forms of slavery, forced labour, servitude and similar abuses resulting from a lack of tight control over armed agents.

17. Most of the violations reported in the Government-controlled areas had been consistently denied by the Sudanese authorities, and there was no indication that they were trying to improve the situation. On the contrary, increased, indiscriminate and deliberate bombing of civilians had been reported, designed, it would seem, to prevent people from settling in the areas affected and make them completely dependent on relief aid. Unfortunately, no truly meaningful dialogue had been established on those issues with government officials.

18. When examining Sudanese penal legislation he had applied only those standards of international human rights law to which the Sudan had acceded or which applied as a matter of customary law. In so far as the "sources" of that legislation were concerned, the first preambular paragraph of the 1991 Act stated that it had been passed "in accordance with the provisions of the Third Constitutional Decree of 1989". Other sources, included the "September Laws" of 1983 and a draft penal code discussed by the democratically elected Parliament in 1988, but never adopted. The provisions criticized in his report were also contained in those "sources". The "drafter" was the National Salvation Revolution Command Council which had dissolved itself in 1993.

19. The argument developed in the report concerning the "sources" and the "drafter" was thus strengthened, since the law continued to be in force. At the time of its adoption, the Revolution Command Council had been the highest legislative authority in the State. It was in that context alone that his considerations regarding the penal legislation had been made and should be understood. He rejected any interpretation which went beyond a purely legal discussion of the issue. The Sudanese Criminal Act of 1991 was a comprehensive and coherent system of positive legal norms that were to be observed and obeyed by citizens and applied by the courts. The Act did not mention expressis verbis any moral, metaphysical or religious source. Since it stood by itself as an autonomous system of norms, he had adopted a legal positivist approach in analysing its provisions.

20. He had referred in his report to several provisions in the Sudanese Criminal Act that were incompatible with the obligations of the Sudanese Government under international law. For example, the Act allowed children to be sentenced to death in certain cases, contrary to the requirements of article 6, paragraph 5, of the Covenant on Civil and Political Rights, to

which the Sudan was a party. Another example was the right to seek pardon or commutation of a death sentence, which was also enshrined in the Covenant but which was not granted in all circumstances by Sudanese penal legislation.

21. As for the corporal punishment provided for by the Sudanese Criminal Act, he drew attention to the view expressed by the Human Rights Committee, in its General Comment No. 20 of 7 April 1992, that the prohibition of torture under the Covenant extended to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. The Government of the Sudan, as a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, must refrain from actions that would defeat the purpose of the Convention.

22. In reply to the Government's assertion that his considerations concerning its penal legislation constituted an attack on Islam and the freedom of religion of the people of the Sudan, he drew attention to article 5, paragraph 1 of the Covenant on Civil and Political Rights, which stipulated that no parties might exercise a right - in the current case the right to freedom of religion - in a manner "aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant".

23. In response to his concern at the widespread practice of arbitrary arrest and detention and his considerations regarding due process of law, the Government of the Sudan had replied that detention in the Sudan took place in accordance with the internationally recognized legal principles incorporated in constitutional documents and the relevant legislation. However, he continued to receive reports of the arbitrary arrest and detention of persons suspected of being opponents of the Government. Moreover, the communication in question referred to the prohibition of physical or mental harm to a detainee, but he had in his possession many well-documented cases of torture and ill-treatment.

24. Following his recommendation that regional and international humanitarian and human rights organizations should be given free access to the country, the Government had responded that, while it welcomed their presence as visitors, it rejected "their presence as observers imposed upon it". As for human rights monitors, the Government had said that it "categorically rejects the presence of human rights observers in the Sudan, since that would constitute an unjustified escalation in total disregard of the Sudan's cooperation with the Special Rapporteur".

25. He had requested further information concerning the Higher Council for Human Rights. The Government had replied that the procedure for establishing the Higher Council had been initiated but that final approval had yet to be granted, mentioning its need for financial and technical assistance. He assured the Government that, once the Council was established, he would certainly make appropriate recommendations regarding its technical advice and financial assistance requirements. He had already drawn the attention of the Advisory Services Technical Assistance and Information Branch of the Centre for Human Rights to that request for technical assistance. On the subject of humanitarian aid, the Government had assured him of its cooperation with the United Nations and international non-governmental organizations.

26. Another communication stated that the Juvenile Welfare Act of 1983 was still in force. In addition, he had received the final report and recommendations of the seminar organized at Khartoum in December 1993 by the National Council for Child Welfare on the promotion and better understanding of the Convention on the Rights of the Child. Regrettably, however, that seminar had not addressed such problems as those of street children, children's camps, abduction cases and the sale of and traffic in children.

27. Mr. NDIAYE (Special Rapporteur), introducing his report on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7/Corr.1 and Add.1-2), said that it gave an incomplete picture of the allegations of violations of the right to life in 73 countries during 1993. No continent and no political or economic system had been spared summary executions. Women, children, the elderly and the mentally handicapped persons had been among the victims and the practice had been aimed in particular at persons combating racial, ethnic or religious discrimination, defending economic, social, cultural, civil or political rights, aspiring to live on their ancestral lands or inextricably caught up in insurrections and wars.

28. In 1993 he had made 217 urgent calls to 52 Governments concerning more than 1,300 persons threatened with extrajudicial, summary or arbitrary executions. Since the finalization of his report, he had sent some 40 more urgent appeals. More than 2,300 cases of alleged persecutions had been communicated by letter to 51 Governments. The follow-up of cases transmitted during 1992 and 1993 had also been carried out with the Governments and sources concerned. In that year, as in the past, it would have been impossible for him to do anything without the information, suggestions and vital assistance of the non-governmental organizations (NGOs).

29. In 1993 also, he had continued his dialogue with Governments, many of which had been very cooperative. In that connection, he thanked 29 Governments (by name) which had sent him replies after the finalization of his report. An analysis of those replies would be included in his next report. Unfortunately, a number of Governments had chosen to remain silent. He had, in fact, received at long last communications from all the countries mentioned in the list of States which had never replied since the establishment of the mandate in 1982, but the quality of the replies had varied greatly.

30. He was particularly grateful to the Governments which had invited him to visit their country in order to carry out an on-the-spot examination, with the assistance of non-governmental organizations, families and ordinary citizens, of the means available to protect the right to life. Apart from Rwanda, and Peru, which he had visited in 1993, the Governments of Algeria, Argentina, Burundi, Colombia, Indonesia and Sri Lanka, had also invited him to visit them. Possible visits to Azerbaijan and India were also under consideration. He hoped that their example would encourage other Governments such as those of Bangladesh, China, India, Tajikistan and Turkey, countries which he wished to visit.

31. Since his previous report to the Commission at its forty-ninth session, he had visited Croatia, Rwanda and Peru. The reports on those visits were currently before the Commission (E/CN.4/1994/7 and Add.1 and 2). However, not

only had no comments been received from the authorities of Rwanda concerning his conclusions and recommendations (E/CN.4/1994/7/Add.1, paras. 59-86) but the situation in that country had worsened. The Arusha Peace Agreement had not been fully respected and recent events had resulted in the deaths of hundreds of persons. The problem of Rwanda could clearly not be isolated from its regional context, particularly its links with and impact on the crises in Burundi and Zaire, and any proposed solution to the problem must take account of events and developments in those two countries.

32. With regard to Peru, though he had welcomed the adopted of some reforms following his visit, particularly with regard to the legislation governing the trials of persons accused of terrorism, it was disturbing to note that certain shortcomings, to which attention had been drawn, had not been corrected but, on the contrary, had become institutionalized. In connection with the murder of a professor and nine students abducted from "La Cantuta" University in Lima, he once again stressed the importance of forensic experts in investigations into extrajudicial, summary or arbitrary executions and appealed to the international community to establish a team of such experts to assist Governments to fulfil their obligation to investigate every case.

33. There was a disturbing regression throughout the world in the matter of capital punishment, with an expansion of the field of application of the death penalty and a reduction in the guarantees of an impartial trial and effective appeals. Thus, in Algeria, China, Egypt, Pakistan and the United States of America, persons under 18 years of age had been sentenced to death and even executed. In addition, the same countries and eight others had adopted legislation restricting the guarantees of impartiality and the rights of the defence. The range of application of the death penalty had been extended by new legislation in Bangladesh, China, Egypt, Pakistan and Saudi Arabia.

34. Capital punishment was in itself a negation of the right to life. Applied in such circumstances, it became a summary or arbitrary execution or, at any rate, was contrary to the manifest wish of the international community that its application should be exceptional and that it should be abolished completely in the not too distant future. He urged the Commission to act against the alarming trend he had mentioned and to consider capital punishment as a priority question.

35. Another major concern was that impunity still persisted and had become commonplace, even when everyone knew who had perpetrated the crimes. In some cases, Governments simply refused to investigate the crimes; in others they imposed light penalties on a few scapegoats while the real culprits went free; in others still the judicial system was deliberately paralysed. Sometimes, impunity was guaranteed in advance by the law or amnesty laws, adopted on the pretext of national reconciliation, might be concealing atrocities. More distressing still was the fact that legislators, seemingly without pity for the victims, did not even provide for their indemnification.

36. Impunity was a threat to the rule of law and it bred violence. The Commission must therefore call on all States to honour their obligation to investigate all alleged violations of the right to life, prosecute the offenders, indemnify the victims and ensure that extrajudicial, summary or

arbitrary executions did not recur. The actions of armed groups which spread terror among populations were no excuse for States' failure to comply with their obligations.

37. He drew the Commission's attention to the scarcity of the material, technical and human resources with which he had to work. If the international community truly cared about the promotion of human rights, its contribution to that cause should be at least one tenth the amount of its expenditure on weapons. All he personally wanted was three assistants and a secretary so that he could carry out his duties in 1994. He also hoped that appropriate resources would be provided to the other special rapporteurs, with whom he had enjoyed closer relations since the World Conference on Human Rights.

38. Mr. Endo (Japan) took the Chair.

39. Mr. ARTUCIO (Special Rapporteur), introducing his report on the human rights situation in Equatorial Guinea (E/CN.4/1994/56), said that he had paid two visits to that country, in October 1993 and December 1993. The authorities there had been very cooperative on the whole, and he had held a very frank discussion with the Head of State and had been able to interview ministers, members of the diplomatic corps, representatives of international organizations and non-governmental organizations, church leaders, leaders of political parties and members of the general public.

40. He had observed certain positive changes in the human rights situation in Equatorial Guinea, including the acceptance of the multiparty system and legalization of 14 political parties; the release of political prisoners and the amnesty and pardon on 12 October 1993 of several political prisoners. At his request, the Ministry of Justice and Worship had also taken steps to improve prison conditions. Nevertheless, he felt that the Government should permit greater general participation in political, social and economic life and that it should take legislative and administrative steps to win the trust of the opposition parties, including those parties and groups which had refused to participate in the legislative elections of November 1993. Moreover, the police and the military must be instructed to stop regarding members of the political opposition as enemies.

41. There had been no change in the legal structure of Equatorial Guinea since the Commission's forty-ninth session. Power was concentrated in the hands of the President of the Republic to the detriment of the other branches of Government. The independence and impartiality of the judiciary were not guaranteed and the rights of the defence were not respected. There were gaps in the law, pre-independence Spanish laws were out of date and the laws were not published, new laws being read out over the radio or on television. It was thus very difficult for citizens, or indeed lawyers, to cite the law in detail, whether in court or in dealings with the administration.

42. Arbitrary arrests of members of the political opposition were still frequent, often accompanied by torture and abuse. There had been a number of deaths in custody, presumably as a result of ill-treatment. The authorities had not conducted any investigations into such deaths or punished those responsible.

43. The authorities often stretched the law in order to level charges against certain persons who, like those accused of political activities, were court-martialled in summary proceedings. The jurisdiction of the military courts must be limited to specifically military offences committed by military personnel. As things stood, sentences handed down by courts martial could not be appealed to the Supreme Court, even where a death sentence had been passed.

44. The treatment of prisoners and detainees was not in keeping with the treaties to which Equatorial Guinea was a party. Until his second visit in December 1993, prisoners' food had consisted of two pieces of bread a day. They lived on whatever their relatives or friends were able to contribute. However, as a result of his suggestions, that situation had improved. In fact, the prison population at any given time was very small, despite the frequent and repeated arrests of members of the opposition, who were arbitrarily detained for a few days at a time.

45. The laws on freedom of expression, assembly, protest and the press were very restrictive. The practice of religious freedom was not actually inhibited but it was not adequately protected by law, in the view of the spokesmen for the various denominations. After he had written his report, he had learned of the arrest and detention, on 22 December 1993, of Father Eusebio Longinos Mangue, a Catholic priest, for allegedly using catechism classes "as a means of communication for other subjects".

46. Entry into and exit from the country and even freedom of movement within the country were restricted for political reasons. State security services often withheld citizens' passports for months on end, solely on political grounds, and there was a kind of internal customs system whereby the police prevented citizens from travelling from the island of Bioko (on which Malabo, the capital, was located) to the continent and vice versa.

47. Women had an inferior legal and social status and were discriminated against in the educational, professional, social and political fields. A separated woman was imprisoned indefinitely if she was unable to reimburse to her ex-husband the amount of her marriage portion plus the additional cost of her maintenance. Ethnic discrimination was also covered in his report (paras. 73 to 75) but, in view of its seriousness and complexity, it warranted further study.

48. Major progress had been achieved following the signing of the National Pact on 18 March 1993. That progress was described in paragraph 80 of the report. It was his belief, however, that the authorities had not fulfilled a number of commitments assumed under the Pact. The electoral process had been conducted without regard for the observations and recommendations of the United Nations inter-agency mission. As a result of the detention, abuse and intimidation of the political opposition by government agents, eight major parties had withdrawn from the process and called for a boycott of the elections.

49. The Governments of the major donor countries and the intergovernmental institutions, including the United Nations, had decided not to send observers to the elections or to provide financial support being convinced that the

elections would not be truly pluralistic. Lastly, the authorities of Equatorial Guinea had not properly fulfilled their obligations to report to the various human rights treaty bodies.

50. He therefore strongly urged the Government of Equatorial Guinea to meet, without delay, a number of basic conditions set forth in the "Recommendations" section of his report (chap. IV, para. 103). Those conditions included the adoption of administrative and legislative measures in the field of human rights, in the field of legislation and in the political process. Based on consultations with the authorities, the representation of United Nations bodies and a number of foreign embassies in Equatorial Guinea, he had come to the conclusion that those basic conditions could be more easily fulfilled if technical assistance were provided by the Centre for Human Rights and the United Nations Development Programme. The chief beneficiaries of such assistance would be the people of Equatorial Guinea.

51. Paragraph 105, subparagraphs (a) to (f), outlined the type of technical assistance he believed was necessary, including the sending of legal experts and the holding of training courses for senior government officials, judges, prosecutors, military and police personnel, prison officers, the leaders of political parties, and representatives of NGOs, women's organizations and the social sector. The courses and seminars would be organized by the Centre for Human Rights. The implementation of such a programme would substantially improve the human rights situation in Equatorial Guinea but would require the goodwill and cooperation of the Government.

52. Mr. GROTH (Special Rapporteur) said that his report on the situation of human rights in Cuba (E/CN.4/1994/51) constituted an update of the one presented to the General Assembly at its forty-eighth session. Prepared essentially on the basis of information received from a variety and constantly growing number of sources, the report contained specific references only to those cases communicated to the Special Rapporteur which were considered to be most relevant and which had been confirmed by more than one source.

53. As in the past, and despite reiterated requests, the Government of Cuba had continued to refuse to cooperate with him in any way and had provided no information or comments on the various aspects of the cases he had dealt with. That made it impossible for the Special Rapporteur to intervene in the many individual cases, most of them urgent, in which the victims had solicited his assistance.

54. In assessing the situation of civil, political, economic, social and cultural rights in Cuba, he had taken into account a number of constitutional and penal code provisions, but that in no way implied criticism of the ideological principles contained in the Constitution, which was not part of his mandate. His comments related to the restrictions which the interpretation and implementation of those principles by the Cuban authorities placed on the basic rights of the population.

55. That being so, his criticism focused on the lack of opportunities for citizens at all levels to channel and defend their interests and opinions when the latter did not coincide with the Government's authorized line. Those most vulnerable were persons or groups that had emerged for the purpose of

defending human rights or trade-union rights or simply to engage in political activities. It was typical of those groups, about 100 in number, that they used strictly peaceful means to pursue their ends.

56. Owing to the excessive control of the State apparatus, each group was small in number and its possibilities for taking action very limited. He was convinced, however, that their concerns were neither isolated nor transitory, and that their growing numbers reflected the desire of a large part of society to seek avenues not officially approved for promoting its legitimate interests. As for the harassment of which the members of human rights defence groups had been the target, he recalled that Commission on Human Rights resolution 1993/64 had urged Governments to refrain from all acts of intimidation or reprisal against those who sought to cooperate or had cooperated with representatives of United Nations human rights bodies.

57. Perhaps the most visible form of social and political control had been the adoption of discriminatory measures, such as arbitrary dismissal from employment and subsequent ostracism; constant harassment and intimidation by the security organs, or at their instigation; the detention, trial and sentencing for such offences as enemy propaganda, illegal association, assembly and demonstrations, clandestine publishing, contempt, "anti-social behaviour" and the like; and imprisonment in abominable conditions for many years.

58. Those phenomena were commonplace and endemic and had not decreased over the past year. The release of all persons serving sentences for offences having political connotations, the review of trials in which the human rights of the accused had been openly violated and the improvement of conditions for prisoners, in particular for those who had been subjected to such reprisals as confinement in punishment cells for protesting against treatment received or refusing re-education, would appear to require priority attention.

59. Such a situation had not, to his knowledge, given rise to repeated and significant violations of the right to life for political reasons. The opposition in Cuba used words, not arms, to pursue its goals, sometimes even quoting the Universal Declaration of Human Rights; that made the intransigence of the authorities all the more intolerable. The systematic denial of the right to freedom of opinion and expression, peaceful freedom of association and assembly and the participation in the management of political affairs must give cause for concern in the international community. The Cuban authorities must do everything possible to begin a dialogue with all sectors of the Cuban people, both inside and outside the country, as a first step towards normalizing the political situation.

60. Although, in recent decades the majority of the population had made considerable progress in the area of economic, social and cultural rights, the serious economic crisis that Cuba was currently experiencing had led to a marked deterioration in the food and health situation and had also been a contributing factor to the increase in the number of persons seeking to leave the country illegally; that had given rise to frequent and regrettable instances of an excessive use of force by the security organs, in violation of

the right of all citizens freely to leave and return to their country. There had also been numerous accidents involving persons attempting to leave the island.

61. In those circumstances, the trend towards introducing reforms in the economy over the past year must be regarded as a positive step, and it was to be hoped that others would follow. It was his impression, however, that economic reforms were being hampered by ideological and political factors, and in particular by the deep suspicion of any steps to limit firm government control.

62. The embargo maintained by the United States also made reforms more difficult and costly and created political barriers to more far-reaching actions and more immediate results, at a time when the urgent restructuring of the economy and society was essential from both a humanitarian and a human rights perspective. However, the counter-productive and inefficient Cuban economy was the principal cause of the current problems, not the embargo as such.

63. To decide its destiny in a peaceful and civilized fashion, the Cuban people required the disinterested support of the international community. Above all, however, the Cuban Government must step up its timid liberalization measures so that the people could express itself freely, without fear, in the exercise of its sovereign rights, whether civil and political or economic, social and cultural. He was certain that the Cuban people would preserve the social advances that it had achieved.

64. Mr. PEREZ NOVOA (Cuba) said that the hostility shown towards Cuba by succeeding United States Governments over the past 35 years had known no bounds. The imposition of an economic, commercial and financial blockade had been the most permanent expression of an irrational policy of aggression that had included an entire panoply of political, diplomatic, military, paramilitary and terrorist measures. The manipulation of human rights for political ends and the slanderous campaign designed to conjure up a picture of human rights violations in Cuba was another reflection of that obsolete policy and constituted the main reason for the resolutions, scraping through the Commission over the past three years by narrow majorities resulting from the ferocious pressure exerted by the United States.

65. It was regrettable that the new inhabitants of the White House still maintained the old policy towards Cuba. Apparently the United States had not tired of that useless exercise in calumny, just as Cuba would not tire of rejecting and denouncing the selectivity, discrimination, partiality and injustice that the appointing of a special rapporteur implied.

66. His Government repeated yet again, and would continue to do so as long as necessary, that it would never accept the imposition of a special rapporteur, the fruit of an unjust procedure in which the political interests of one Power took precedence over a real preoccupation with human rights. His Government had demonstrated, as few others had done, its cooperation with all the mechanisms and procedures applicable to all States on a universal, non-selective, impartial and non-discriminatory basis, and would continue that cooperation in the future.

67. The report of the Special Rapporteur on the so-called situation of human rights in Cuba was once again guided by the same partiality, selectivity and absence of objectivity as the resolution that had established his mandate. There was no other explanation of the fact that, despite the communications received from organizations in Cuba and the rejection of the economic, commercial and financial blockade by the international community in General Assembly resolutions 48/16 and 47/19, not to mention the Special Rapporteur's own opinion in paragraph 75 of his report, he had deemed it neither necessary nor important to include in his eight recommendations any call upon the United States to put an end to a criminal blockade that had so affected the human rights of an entire people, including those of 2 million children.

68. It was difficult to interpret in any other way the fact that, in his "conclusions and recommendations", the Special Rapporteur had decided to include the pastoral letter of the bishops of Cuba, since it was "the product of real-life experiences and actual day-to-day contact with the realities of Cuban life" (para. 70), but not the numerous communications from members of Protestant churches, ecumenical movements, Christian institutions and Catholic lay people, the texts of which could be found in the office of the Secretary-General. Perhaps the Special Rapporteur thought that the pastoral letter should be included in his conclusions and recommendations because, although it had been made public, no one had been subjected to reprisals therefor, thus proving that freedom of expression existed.

69. The Special Rapporteur's impartiality might well be doubted by the reader of the accounts contained in paragraph 40 of the report; the Special Rapporteur had omitted the statements made and the evidence submitted by the Cuban Government to foreign journalists and the official reply which it had disseminated in the international mass media.

70. There was no reference either to the military base located in occupied Cuban territory, in flagrant violation of the sovereign rights of Cuba and of the principles of human rights. By emphasizing one category of human rights and not all human rights in their interrelationship, interdependency and indivisibility, the report had hardly shown itself to be impartial, fair and objective. Nowhere was it mentioned that, although the Cuban Revolution had had to face hostility and aggression since its inception, it had still guaranteed the human rights of its people. At no point was the State named that has been promoting a policy of outright hostility, in gross violations of the principles that should govern relations among States. It was strange that the Special Rapporteur had shied away from calling things by their proper names: for example, when he stated in paragraph 39 that he was against "people abroad" encouraging Cubans to leave by means that entailed enormous risk to life, he might just as easily have said "people in the United States".

71. Although admitting that he did not have sufficient information to form an opinion on the matter, the Special Rapporteur had nevertheless stated that the results of the elections of February 1993 had not been proof of support for the Government because the electorate had never been given a genuine choice (para. 73). Apparently the Special Rapporteur had not heard about the intense campaign, conducted day and night by 30 broadcasting stations in the United States, calling upon the people of Cuba to reject the Government and

the system by casting spoiled ballots. The Cuban people had thus had a clear choice, because they had the opportunity, in a secret ballot, to reject the system, the Government and the electoral process itself. Yet, despite that massive campaign, 95.6 per cent of the voters had cast their votes in favour, thus endorsing the system and the Government. That was irrefutable proof that the Cuban people, in its great majority, intended to maintain the independence, sovereignty and human dignity it had so hardly won.

72. In his conclusions and recommendations, the Special Rapporteur called upon the international community to encourage the establishment in Cuba of a market economy which, in the long run, would lead to the desired political changes. He wondered whether the Special Rapporteur was more concerned about human rights in Cuba or about its socio-economic and political system.

73. The Herculean efforts made by Cuba under such adverse conditions to preserve its victory and to promote its economy and development were well known, but the Cuban people had also to struggle every day against those who invoked freedom in an attempt to enslave it economically and politically. His Government was intensifying its commercial and financial relations so as to increase the flow of investment and financing needed to mobilize the Cuban economy. Nevertheless, in the search for forms that met the needs and aspirations of the Cuban people, the national spirit would take precedence; no one abroad had the right to decide in what way Cuba's political or economic system should be changed. Change was, indeed, necessary, and might yet make it possible to discuss, on an equal footing and without any preconditions, the existing differences between Cuba and the United States.

74. He would not waste the Commission's time on the supposed emigration or "parties and organizations" problems that had been given so much space in the report. His delegation had made available, at the back of the conference room, a secret document in which the United States Government acknowledged that there was no evidence to support the reports of alleged human rights violations and also recognized the true nature of the so-called champions of human rights in Cuba. It was unfortunate that the United States Government agreed with his own Government only in secret documents and not in its propaganda or in the public discussions in the Commission.

75. Mr. SHIDDO (Sudan) said that the Commission had discussed the situation of human rights in the Sudan for the first time at its forty-seventh session, under the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII). In May 1992, it had appointed an Independent Expert for the Sudan, Mr. Bíró, to whom the Government of Sudan had extended its unreserved cooperation and assistance. At the initiative of certain countries whose relations with the Sudan were not good, the General Assembly had adopted resolution 47/142, pre-empting the Independent Expert's report, in which he had recommended that his mandate should be extended. That recommendation, although accepted by the Working Group on Situations, had been rejected by the United States Government. Consequently, in its resolution 1993/60, the Commission had decided that the situation of human rights in the Sudan should be examined under the public procedure and had requested its Chairman to appoint a special rapporteur for that purpose.

76. That sequence of events clearly demonstrated a consistent pattern of selectivity, partiality and manipulation of the United Nations human rights system for political and other purposes. Such a pattern also characterized the report of the Special Rapporteur, Mr. Bíró (E/CN.4/1994/48). The political agenda of the Special Rapporteur, and of the other enemies of Islam who were using him for their purposes, was to recommend in his report the abolition of the Islamic Shariah laws applicable in the Sudan, which reflected a vicious attack on the fundamental principles of Islamic penal legislation and on the Islamic faith in general, a matter which could not and would not be tolerated by the Government and the people of Sudan.

77. The Special Rapporteur had, furthermore, made a sacrilegious reference to the sources of Muslim revelation by stating (para. 61) that "it does not matter in this context who the drafter is nor what the sources of inspiration of these norms are". The Special Rapporteur's attempt to explain that the "drafter" referred to was the National Salvation Revolution Command Council, which had enacted the law, was futile. There was a difference between enacting a law and drafting norms. The Revolution Command Council and the Council of Ministers had enacted that law, but had not drafted it. It was well known that the hudud and the qisas had not been drafted by a human hand; they were derived from divine command.

78. The Special Rapporteur had betrayed his mandate. He had acted in a manner contrary to Article 1, paragraph 3, of the Charter of the United Nations, which encouraged "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" and to Article 2, paragraph 7, which prohibited the United Nations from intervening in matters which were essentially within the domestic jurisdiction of a State. He had also violated article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, which guaranteed the right to the freedom and practice of religion.

79. The Special Rapporteur had failed to indicate how and why the penal law of Sudan was inconsistent with the International Covenants on Human Rights. His lack of knowledge of Islamic Shariah as a source of public international law, coupled with his eagerness to carry out the political agenda dictated to him, had led him to make irresponsible remarks about the two main sources of Islamic law, the hudud and the qisas, which had been chosen by the people and Government of the Sudan and which prevailed in his country.

80. The report was not the result of observations that the Special Rapporteur had made during his short visits to the Sudan; he had, in fact, relied on information fed to him from outside the Sudan by elements of the corrupt, desperate and self-exiled Sudanese opposition and by other parties interested in putting pressure on the country. According to his mandate, the Special Rapporteur had to "investigate" allegations by seeking "credible and reliable information". Nevertheless, he had occupied himself exclusively with allegations which, according to his own report, "seemed" to be well-founded, from which it could only be concluded that either intentionally, or from lack of experience and professionalism, he had failed to fulfil his mandate. He

had not even bothered to include in his report any reference to the criteria by which he had measured the credibility or reliability of the information received.

81. In a letter dated 24 February 1994, the Special Rapporteur had tried to defend his position by stating that he had limited his criteria to those standards of international human rights law to which the Sudan had voluntarily consented, and that his remarks should be interpreted on a purely legal basis. He had not clarified, however, how Islamic norms were in contradiction with international instruments.

82. In his report as an Independent Expert, Mr. Bíró had not referred to specific hudud or qisa offences as Islamic doctrines, nor had he attacked that doctrine as he had done in his report as Special Rapporteur. He had also admitted, in his earlier report, that it had been beyond his mandate to take a position on arguments put forward by Government officials concerning definition of penalties or their mode of execution, as that was an internal matter of the State concerned. In that report, Mr. Bíró had used moderate and inoffensive language. In his interim report to the General Assembly (A/48/601, paras. 27-31), he had referred to Government obligations under international law, but without touching on Islamic laws or recommending their abolition.

83. In his report to the Commission as Special Rapporteur (E/CN.4/1994/48), however, Mr. Bíró had violated international standards. He had used abusive and offensive language, had made specific reference to hudud and qisa offences, and had made insolent references to the source of inspiration of those norms. That had been the principal cause of the angry reaction of the people and the Government of Sudan and of Muslims worldwide.

84. It was not enough for the Special Rapporteur to refer to general observations made in the past or to assert that he had respected religious beliefs. An apology and retraction of the paragraphs in question was needed. Maintaining them was tantamount to insulting religious values and, since the Special Rapporteur had refused to delete the paragraphs in question, the logical inference was that he meant to insult a major religion.

85. The specific allegations made in the report were unfounded. Frequent references had been made to so-called ghost houses where detainees were allegedly tortured. His Government had always denied the existence of such houses. The Special Rapporteur had not even requested permission from the authorities to visit one of those houses, whose location he allegedly knew. Instead, he had chosen to report allegations without taking the opportunity to verify them.

86. In paragraph 50 of the report, the Special Rapporteur had portrayed the Popular Defence Forces guarding the supply trains as being on a looting, raping and killing foray. In fact, those forces had had to walk on either side of supply trains for almost 50 kilometres; they could have had no other motive than to protect the trains from the attack of the rebel forces.

87. The Special Rapporteur had requested information about alleged arrests, disappearances and summary executions. The Government had investigated the

cases in question and had conveyed the results of its investigations to the Special Rapporteur. Some of the persons in question were free, some of them had never existed, and some were being investigated or had been convicted in a fair trial and were in prison. The Special Rapporteur had failed clearly to reflect that information in his report.

88. The Special Rapporteur had drawn conclusions relating to executions and arbitrary killings of thousands of civilians, without providing any evidence. That demonstrated carelessness and lack of responsibility. His Government could certainly not be expected to answer such sweeping statements or to accept such unsubstantiated conclusions.

89. The Special Rapporteur had failed in many cases to report on progress in the Sudan, as required by his mandate. Among the positive aspects he had neglected were the Government's efforts to provide care to children; its efforts in the field of humanitarian assistance, culminating in a series of bilateral and multilateral agreements; the lifting of the night curfew in Khartoum; the amending of the National Security Act to provide more guarantees, including a detainee's right to file a complaint concerning any violation of his right not to be subjected to physical harm or cruel treatment; the incorporation of provisions in the Penal Code of 1991 making punishable all acts of torture or ill-treatment of detainees; and the progress made in improving prison living conditions and the treatment of prisoners.

90. In spite of his bias, the Special Rapporteur had been obliged to include in his report some favourable aspects of the human rights situation in Sudan. Other official foreign visitors to Sudan, including the Minister for Development Cooperation of the Netherlands, and the representative of UNICEF, had provided much more objective reports than the Special Rapporteur: all had spoken in favourable terms about his country.

91. In evaluating the situation of human rights in Sudan, the Commission must take into consideration the clarifications his Government had provided in the past, the difficulties posed by the civil war it had inherited, and the fact that it had cooperated fully with the Commission and had confirmed its commitment to respect and observe its obligations under the various human rights instruments.

92. He suggested, therefore, that the Commission should delete and disregard paragraphs 59, 60, 61 and 133 (a) of the report (E/CN.4/1994/48); set up an ad hoc expert group to consider whether the United Nations or any of its bodies or agents had the right to recommend the abolition of national legislation based on religious commands; refuse to consider the remainder of the Special Rapporteur's report; and take cognizance of the fact that human rights violations in the Sudan were not part of a systematic policy of the Government, but rather a product of the armed conflict in the country, to which the international community should attempt to find a peaceful solution.

93. He requested that the Commission should discontinue its consideration of the human rights situation in the Sudan. Otherwise, it must be concluded that the United Nations human rights system was hypocritical, biased and used double standards. In that connection, he wished to pay tribute to the martyrs of Hebron and the Lebanon and wondered why the criminal acts of Israel were

being ignored by the Commission. If the Commission decided to continue its consideration of the situation in his country, his Government would no longer cooperate with the Special Rapporteur or receive him in its territory because of the contempt he had demonstrated for Islam, his lack of professionalism, credibility and objectivity.

94. The CHAIRMAN reminded participants that the Commission had adopted time-limits for the various types of statement. The details could be found in paragraph 46 of the appropriate summary record (E/CN.4/1994/SR.2) and he appealed to all speakers to respect them.

The meeting rose at 1 p.m.